THE NATIONAL COMPANY LAW TRIBUNAL
COURT V, NEW DELHI

I.A No. 2113/2023
IN
Company Petition No. (IB) – 771/PB/2018

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of NCLT Rules, 2016.

IN THE MATTER OF:

CAPRI GLOBAL CAPITAL LIMITED

.... PETITIONER

VERSUS

VALUE INFRATECH INDIA PRIVATE LIMITED

.... CORPORATE DEBTOR

AND IN THE MATTER OF-

ANSHUL ELECTRONICS PVT. LTD.
Having its registered office at:
5/1/9, UGF, Block 5, Geeta Colony,
New Delhi 110031

.... APPLICANT

VERSUS

VALUE INFRATECH INDIA PRIVATE LIMITED
(Through the Resolution Professional)
715, Navrang House, 7en Floor, 21 K G Marg,
Cannaught Place, New Delhi 110001

.... RESPONDENT

Order Pronounced on: 21.08.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)
DR. RANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant:
For the Respondent: Adv Rishabh Jain

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This Application has been filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by the Applicant, Anshul Electronics Pvt. Ltd., aggrieved by the decision of the Respondent/Resolution Professional, wherein the claim of the sole financial creditor, M/s Capri Global Capital Ltd., had been admitted to the tune of Rs. 27,38,75,051/-, thereby allocating 71.41% voting rights in the CoC.
2. The Applicant in the present application has prayed for the following relief:-

   To direct the Resolution Professional to fix the claim of the Petitioner/financial creditor as well as of home buyers appropriately followed by fixation of their respective voting rights, in the interest of justice and equity.

3. ***Briefly stated the facts of the case as mentioned in the instant application, which are just and necessary for adjudication, are as follows:*** -

   (a) The Corporate Debtor, Value Infratech India Pvt. Ltd., was admitted into the Corporate Insolvency Resolution Process (CIRP) by this tribunal vide order dated 03.01.2020. The Committee of Creditors (CoC) was constituted and subsequently resolved to proceed with the liquidation of the Corporate Debtor. Consequently, the Corporate Debtor was admitted into liquidation proceedings by this tribunal via an order dated 04.01.2023.

   (b) M/s Capri Global Capital Ltd., the sole Financial Creditor, extended a secured loan of Rs. 37.20 crore to the Corporate Debtor and its two sister concerns, of which Rs. 6.65 crore was disbursed to the Corporate Debtor.

   (c) As per the total loan advanced by the Financial Creditor, majority voting rights were allocated to the Financial Creditor in the CoC, which were sufficient for driving the entire resolution proceedings

of the Corporate Debtor. Consequently, Homebuyers approached the Hon'ble NCLAT, and vide its order dated 29.11.2021, quashed the constitution of the CoC and directed the proper fixation of claims of the Financial Creditors as well as Homebuyers, remanding the matter back to this Adjudicating Authority.

(d) Subsequently, a fresh CoC was constituted and the claims of the Financial Creditor and the Homebuyers were admitted. However, the claim of the Financial Creditor was again admitted to the tune of Rs. 27,38,75,051/-. The Applicant alleged that the Respondent/Resolution Professional had clubbed the claims of the Financial Creditor with compound interest at 24%, thereby giving the Financial Creditor an undue advantage of a much higher voting share than was permissible to them.

(e) The Applicant contended that the Respondent/Resolution Professional is giving undue favor to the Financial Creditor by allowing compound interest as per the Loan Agreement. Additionally, when the management of the company is not in existence, the CoC cannot be bound to follow the terms and conditions of the Loan Agreement.

(f) The Applicant asserted that the claim of the Financial Creditor should have been based on the loan disbursed only to the Corporate Debtor. The Respondent/Resolution Professional hasn't provided any information to the Applicant as to how the quantum of Rs. 27.38 Cr. was calculated. Admitting inflated claim of the Financial Creditor has led to limiting the voting share of the Applicant to 1.18% and 28.78% for all Homebuyers.

(g) The Applicant alleged that the Respondent/Resolution Professional erred in considering the observations of the Hon'ble NCLAT in its Judgment dated 14.5.2019 in the appeal Capri Global Capital Limited vs. Value Inf racon India Pvt. Ltd. [CA(AT)(Ins) No. 29 of 2019] wherein it is clearly held that "Financial Creditor can claim its voting shares based on the

amount actually disbursed in favor of Corporate Debtor." Thus, admission of any amount over and above Rs. 6.65 Cr. is beyond the purview of the Respondent/Resolution Professional.

(h) Thus, the resolution process of the Corporate Debtor has not been pursued with due diligence by the Respondent/Resolution Professional, and the admission of inflated and unrealistic claims, thereby giving an improper voting share to the Financial Creditor, is against the law.

4. ***Contentions asserted by the Learned Counsel appearing on behalf of the Respondent in reply to the present Application.***

(a) The Respondent/Resolution Professional asserted that the erstwhile IRP, Mr. Sanjay Kumar Singh, collated the claim of the Financial Creditor to the tune of Rs. 149.09 Cr. Thereafter, the homebuyers challenged the liquidation order dated 04.01.2021 on the ground of the illegal constitution of the CoC and allocation of highly inflated voting rights to the Financial Creditor. Thus, the Hon'ble Tribunal directed the re-collation of the Financial Creditor's claim and quashed the constitution of the CoC with the direction to change the IRP.

(b) In response to the public announcement, the Financial Creditor has filed its claim of Rs. 305.32 Cr. in Form C. In compliance with the Hon'ble NCLAT order dated 29.11.2021, the Respondent/Resolution Professional has collated the claim of the Financial Creditor at Rs. 27.38 Cr., comprising a principal of Rs. 6.65 Cr. and interest of Rs. 20.73 Cr. It is further submitted by the Respondent/Resolution Professional that the interest of Rs. 20.73 Cr. was collated in terms of Clause 2.5 (i) and (iv) of the Loan Agreement duly executed between the Corporate Debtor and the Financial Creditor on 17.09.2014 and registered with the Registrar of Companies, Delhi and Haryana.

(c) The Respondent/Resolution Professional contended that Regulation 8(2) of the CIRP Regulations, 2016 provides that a

Financial Creditor can prove their claim based on documents entered into by the Corporate Debtor. Thus, the claim of the Financial Creditor was collated based on the documents available with the Respondent/Resolution Professional and submitted by the Financial Creditor.

(d) The Respondent/Resolution Professional also submitted that once the Corporate Debtor has contracted to pay interest to the Financial Creditor, neither the Resolution Professional nor this Hon'ble Adjudicating Authority has the power to rewrite the contract through interpretative processes. Furthermore, the Hon'ble Appellate Tribunal, in Company Appeal (AT) (Ins.) No. 29 of 2020, had also allowed the interest component to the Financial Creditor based on the same Loan Agreement.

(e) The Respondent/Resolution Professional further contended that as per Section 50 of the I & B Code, 2016, the look-back period is 2 years preceding the insolvency commencement date, i.e., 03.01.2020, whereas the date of the Loan Agreement is 17.09.2014. There is nothing on record from the Applicant to show that the Financial Creditor is not entitled to any interest or that the Respondent/Resolution Professional erred in allowing the interest to the Financial Creditor in accordance with the Loan Agreement.

Analysis and Findings

5. We have heard the Learned Counsels for the Applicant and the Respondent, and further perused the averments made in the Application, Reply filed by the Respondent/Resolution Professional, and written submissions presented by the Parties. As per records, no one appeared on behalf of Applicant on 18.04.2024 and 27.05.2024, therefore, right of the applicant to file written submission has been closed vide order dated 27.05.2024. The Applicant has filed this application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 seeking directions to the Resolution Professional to fix the

claim of Financial Creditor as well as of homebuyers appropriately and their respective voting rights in the CoC.

6. The Applicant alleged that the claim of the Financial Creditor against the Corporate Debtor has been admitted by the Respondent/Resolution Professional as Rs. 27,38,75,051/- along with 24% compound interest thereby giving undue advantage of having higher voting share to the Financial Creditor. However, the Respondent states that the claim of the financial creditor is based on the premise that the Clause 2.5 (i) and (iv) of the original Loan Agreement dated 17.09.2014 provides for 24% compound interest on the loan amount disbursed to the Corporate Debtor. Clause 2.5 (i) and (iv) of the Loan Agreement is reproduced as below:

"2.5 Interest

(i) The Borrowers shall pay interest on the Facility amount at the Interest Rate of 24% (twenty four percent) p.a. ('Interest"). It is clarified for the avoidance of doubt that Interest shall be deemed to exclude and shall be in addition to any service tax, interest tax, such other levies as applicable and other statutory dues and costs. It is hereby agreed by the Borrowers that in the event there is a change in the benchmark rate of interest applicable to the Lender, the Interest rate may be revised by the Lender from time to time by giving a 7 (Seven) days prior written notice to the Borrower. Interest would, however, be paid after deduction of Tax Deduction as per Applicable Laws.

(ii) …

(iii) …

(iv) Interest under this Clause 2.5 shall accrue on and from the Drawdown Date, shall accrue daily and be compounded daily on the basis of a year of 365 days from and including the first day and last day of each month for which a rate of interest is determined."

7. The Applicant has stated that when the management of the company is not in existence, the CoC is not bound to follow the terms and conditions of the Loan Agreement. However, it is a settled position of law that no covenants of the Corporate Debtor will be annulled upon

the initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

8. As asserted by the Respondent/Resolution Professional, the claim of the Financial Creditor has been collated in compliance of Regulation 13 and 14 of the CIRP Regulations, 2016 and Hon'ble NCLAT order dated 14.05.2019 in CA(AT)(Ins) No. 29 of 2019. The issue for consideration is whether the Resolution Professional is right in collating the claim of the Financial Creditor and the rate of interest as mentioned in the Loan Agreement. As stated above, the Clause 2.5 (i) and (iv), the interest rate of 24% p.a. was liable to be paid by the borrower. Thus, we are of view that the Respondent/Resolution Professional has rightly collated the claim of the Financial Creditor while considering the Hon'ble NCLAT directions and all the relevant documents attached with the claim form. we can find provisions for awarding Rate of Interest in Section 34 of the Civil Procedure Code, 1908 and in the Interest Act, 1978.

9. However, the Hon'ble NCLAT in **Arun Kumar v. Sripriya Kumar and Others, 2023 SCC OnLine NCLAT 494** has considered the applicability of these provisions in the IBC Proceedings and has observed as under:

> *"**13.** It is submitted that Section 21A of the Banking Regulations Act will not have any overriding effect upon Section 34 Procedure, save and except on 'Usurious Loans Act, 1918'. However, as to commercial transactions a proviso has been added under Section 34 providing discretion to exceed 6% interest rate, but it shall not exceed contractual rate of interest. It is contended that in this case as per Section 21A contractual rate is already computed in the admitted Claim. It is submitted that as per Sections 3 & 5 of the Interest Act, 1978, the Act will apply only to situations where Section 34 of Civil Procedure Code, is not applicable. It is neither applicable to a situation where interest is payable as of right by virtue of an agreement not to a situation where payment of interest is barred by virtue of an Express Agreement. In the matter of 'Irrigation Department, State of Orissa v. G. Roy' reported in [(1992) 1 SCC 508], the Hon'ble Supreme Court held that this Interest Act, 1978 is*

applicable to a situation where the Agreement does not provide for grant of such interest nor does it prohibit such grant when the Agreement is silent as to award of interest. It is the case of the Appellant that in the present case, interest and penal interest and their rates have been set out in the Settlement Agreement dated 22/05/2018 and the same has been acted upon and claimed interest and penal interest till the Claim was admitted by the IRP. The Learned Counsel for the Appellant submitted that this situation will not fall under the Interest Act, 1978. The Learned Counsel relied on the matter of 'Kottayam District Co-Operative Bank v. Annie John' rendered by the Hon'ble High Court of Kerala and reported in [2002 SCC OnLine KER 184] in support of his submission that penal interest cannot be included with the contractual rate of interest for awarding future interest from the date of the suit.

14. *…*

15. *…*

16. *The moot question which arises for consideration in this issue of capitalization of penal interest by the Bank, raised by the Appellant, is to be examined within the Provisions of IBC, 2016. The Learned Counsel for the Appellant placed reliance on the Judgment of the Hon'ble Apex Court in the matter of in 'Central Bank of India v. Ravindra' reported in [(2002) 1 SCC 367] wherein it is held that subject to the terms of a Voluntary Contract or established practice or usage and subject to any legislative restriction, charging of interest at reasonable rates on lendings on periodical rests and capitalization thereof on remaining unpaid was held permissible under Section 34 of Civil Procedure Code, 1908 with certain note of caution. The Hon'ble Apex Court has discussed in detail the Section 34 of the Civil Procedure Code, 1908 and held that Section 34 confers the discretion on the Court to award or not to award interest or to award interest at such a rate as it deems fit dehors the contract between the Parties. The discretion has to be exercised fairly, judiciously and for reasons and not arbitrarily. It was also held that the relief of pendente lite and future interest can be refused. The subject matter in that case was with respect to whether the Hon'ble High Court was justified in upholding the Trial Court's Decree to the extent future interest was not allowed on the entire amount but pendente lite and future interest at 11% was allowed only on the Principal amount. This ratio cannot be made applicable to the facts of this case as this Tribunal under the Provisions of IBC,*

2016 does not have the jurisdiction or the discretion to either award any interest or reduce or increase any rate of interest which is the subject matter of a contract between the Financial Creditor and the Promotor of the Corporate Debtor. It is the case of the Appellant that in case of any delay in payment, 3% penal interest per month compounded monthly will be charged on the delayed period and if the installments are not paid for consecutive three months, the default would arise giving the right to the Bank against the Corporate Debtor."

Thus, quantum of interest calculated at 24% which is already stipulated in the Loan Agreement dated 17.09.2014 between the Financial Creditor and the Corporate Debtor cannot be disregarded despite of it being at exponentially higher side. The Adjudicating Authority is constrained from evaluating or modifying any rate of interest contracted between the parties as per the scheme of Insolvency and Bankruptcy Code, 2016. Hence, we do not inclined to evaluate and reduce the agreed the rate of interest in the aforesaid Loan Agreement.

10. The Hon'ble Supreme Court in the matter of **Rajasthan State Industrial Development and Industrial Corporation & Anr. v. Diamond & Gem Development Corporation and Anr. (2013) 5 SCC 470**, held that:

"23. A party cannot claim anything more than what is covered by the terms of contract, for the reason that contract is a transaction between the two parties and has been entered into with open eyes and understanding the nature of contract. Thus, contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meanings unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely. [Vide United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal [(2004) 8 SCC 644 : AIR 2004 SC 4794] and Polymat India (P) Ltd. v. National Insurance Co. Ltd. [(2005) 9 SCC 174 : AIR 2005 SC 286]]

Thus, it appears that, the Resolution Professional has collated the claim of Financial Creditor on the basis of terms of Loan Agreement. Therefore, we cannot find any fault in the decision of the Resolution Professional to admit the claim of 24% Rate of Interest and in terms of law laid down, this adjudicating authority is not supposed to examine the reasonableness of the Rate of Interest as stipulated in the Loan Agreement. The Respondent/Resolution Professional has correctly admitted the claim of the Financial Creditor as per the Loan Agreement along with interest calculated in terms of the stipulated rate of interest to be accrued in terms of clause 2.5 of the Loan Agreement.

11. In sequel to the above, we find no error in the decision of the Respondent/Resolution Professional admitting the claim of the Financial Creditor. Hence, we are not inclined to interfere with the decision of the Resolution Professional. With the aforesaid observation**, IA No. 2113 of 2023 in CP(IB) No. 771/PB/2018 stands dismissed** and is accordingly **disposed of.**

Let the copy of this order be served to parties.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)